

NEW JERSEY BOARD OF PUBLIC UTILITIES

Courtesy Copy of Proposed Additional Amendments

30 November 2004

N.J.A.C. 14:3-8, EXTENSIONS TO PROVIDE REGULATED SERVICES

N.J.A.C. 14:3-10, TARGETED REVITALIZATION INCENTIVE PROGRAM (TRIP)

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

General requirement to provide extensions; Requirement to put certain extensions underground; Exemptions from cost limits on areas not designated for growth; Calculating the targeted revitalization incentive program (TRIP) charge

Proposed Amendments: N.J.A.C. 14:3-8, 14:10

Authorized By: Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Connie O. Hughes and Jack Alter, Commissioners.

Authority: N.J.S.A. 48:2-13, 48:2-16; N.J.S.A. 48:2-27, 48:2-23; NJSA 48:5A-36, and 48:5A-10.

Calendar Reference: Exempt by virtue of 60 day comment period.

BPU Docket Number: AX 04101148 (companion to AX03120973)

Proposal Number: PRN 2004-

Submit comments by February 19, 2005 to:

New Jersey Board of Public Utilities
Kristi Izzo, Secretary
ATTN: BPU Docket Number: AX 04101148
Two Gateway Center
Newark, New Jersey 07102

A public hearing on the proposal will be held at 9:30 a.m. on January 11, 2005 at:

New Jersey Board of Public Utilities
Board Hearing Room
2 Gateway Center, 8th Floor
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Public Utilities (Board) has, elsewhere in this issue of the New Jersey Register, adopted amendments and new rules to ensure that its programs reflect the smart growth policy goals of the State. The amendments and new rules will govern the responsibility borne by regulated entities for the costs of certain investments in infrastructure, based on whether the development served by the infrastructure is in an area designated for growth under the State Development and Redevelopment Plan (State Plan). Those amendments and new rules were proposed on January 20, 2004. During the comment period on those amendments and new rules, some substantive changes were identified as necessary to properly implement the Board's intent in furthering smart growth goals. This proposal makes those changes.

A section-by-section description of the proposed amendments follows:

SUBCHAPTER 8 EXTENSIONS TO PROVIDE REGULATED SERVICES

14:3-8.3 General requirement to provide extensions

A new requirement is proposed at N.J.A.C. 14:3-8.3(a), to ensure that the regulated

entity provides potential applicants for main extensions with a copy of these rules. In addition, the regulated entity shall obtain, as part of the application for an extension, a certification from the applicant that they received a copy of these rules.

14:3-8.4 Requirement to put certain extensions underground

As detailed above, the January 20, 2004 proposal contained a proposed N.J.A.C. 14:3-8.4. However, based on input from commenters and stakeholders, it was clear that the provisions as proposed on January 20, 2004 did not adequately meet the Board's intent to carry over the substance of the prior rules regarding underground extensions. Therefore the Board is again proposing these provisions with extensive revisions.

Proposed new N.J.A.C. 14:3-8.4 provides when an extension may be overhead and when it must be placed underground for each regulated entity. This section consolidates all prior underground extension rules in one place, with the exception of those for cable television. Currently, underground extension rules for electric and telephone service are found at N.J.A.C. 14:5-4, and 14:10-3 and 4, respectively. The proposed new section incorporates those requirements and ensures consistency among regulated entities.

While this proposed new section includes the substance of the prior underground rules' requirements, it reorganizes the requirements and provides a great deal more detail.

N.J.A.C. 14:3-8.4(a) sets forth the scope of the section. N.J.A.C. 14:3-8.4(b) provides that water and gas extensions shall be underground, and that cable extensions shall be governed by the cable rules at N.J.A.C. 14:18-2.

N.J.A.C. 14:3-8.4(c) and (d) carry over the substance of the prior rules at N.J.A.C. 14:5-4 and N.J.A.C. 14:10-4, which govern when extensions of electric and telecommunications service must be made underground. The proposal adds substantial detail in order to specify more clearly the class of extensions governed by the rules.

N.J.A.C. 14:3-8.4(c) provides that extensions of electric or telecommunications service to non-residential development shall be underground in cases where the development does not have service as of the rules' effective date and the local government or the regulated entity requires underground service. This reflects the Board's historic practice, and provides important flexibility for local governments.

N.J.A.C. 14:3-8.4(d) addresses new residential development and again carries over the substance of the prior rules, which require underground service if the development will serve three or more units and will either be placed along new streets or will have a capacity of less than 4 megavolt amps.

N.J.A.C. 14:3-8.4(e) allows overhead service to a lot abutting an existing street with overhead service. This was found in the prior rules at N.J.A.C. 14:5-4.4(j).

N.J.A.C. 14:3-8.4(f) contains the substance of provisions in prior rules at N.J.A.C. 14:5-4.4(a) and N.J.A.C. 14:10-4.5(a), which require that underground service be reasonably equivalent to overhead service, and that if underground service is requested but not required, the requesting party is responsible for the extra cost of underground service.

N.J.A.C. 14:3-8.4(g), (h), (i) and (j) carry over the substance of prior rules and provide for certain components of an extension to be aboveground, for installation of temporary overhead facilities where needed, for street lighting to be underground, and for Board approval of an exemption from underground requirements.

N.J.A.C. 14:3-8.4(k) and (l) also carry over the substance of prior rules, and provide for sharing of trenches by multiple regulated entities when underground extensions are constructed.

Commenters on the January 20, 2004 proposal, adopted elsewhere in this issue of the New Jersey Register, made the following main points regarding the underground provisions as they were proposed on January 20, 2004:

Commenters stated that the proposal expanded the underground requirements beyond those in the prior rules, that placing infrastructure underground is much more expensive than placing it overhead, and that it may increase the time needed to repair lines and restore service after an outage, and thus should not be required unless necessary. The Board is aware of the expense and potential maintenance problems associated with underground extensions. Therefore, this proposal is carefully worded to ensure that underground extensions are required only when necessary for safety, reliability, and aesthetics. As indicated in the summary of the January 20, 2004 proposal (see 36 NJR 278), the Board did not intend to expand the undergrounding requirements beyond the scope of the corresponding provisions in the prior rules. These new proposed provisions more accurately reflect those prior rules.

Commenters were also concerned that the term "reasonably equivalent" should not impose a higher standard of reliability upon underground service than is imposed on overhead service. This term was used in the same way in the prior rule provisions for underground service, and the Board does not intend to change its existing interpretation or practice in this regard.

Commenters were concerned that proposed N.J.A.C. 14:3-8.4(h) would require them to seek Board approval of each charge to an applicant for a temporary installation. This concern has been addressed by clarifications in the proposal and in the adoption, elsewhere in this issue of the New Jersey Register, of the January 20, 2004 amendments. (see N.J.A.C. 14:3-8.10(g) as adopted). The rule has been clarified to

indicate that costs for a temporary installation would be handled in the same manner as any other extension costs.

A commenter was confused as to the timing of the escrow requirement in proposed N.J.A.C. 14:3-8.4(j). The provision has been clarified in this proposal.

A commenter suggested that the N.J.A.C. 14:3-8.4(l) include a timeframe for markouts. The Board's rules at N.J.A.C. 14:2-4.1 set forth the timing requirements for mark-outs under the State's One Call program. Nonetheless, N.J.A.C. 14:3-8.4(l) has been clarified slightly in the proposal to emphasize that it is the applicant's responsibility to ensure coordination among the regulated entities that will use the trench.

14:3-8.8 Exemptions from cost limits on areas not designated for growth

N.J.A.C. 14:3-8.8 provides for exemptions from the limits on regulated entity contributions to development serving areas not designated for growth at N.J.A.C. 14:3-8.6. A new exemption is proposed for extensions for the purpose of converting to natural gas to replace existing appliances that are powered by sources other than natural gas. This reflects the fact that, even though such extensions serve new customers, the extensions are made to serve existing buildings. Therefore, such extensions will not affect sprawl development or the State's smart growth goals. A regulated entity would only be able to utilize this exemption if the structure served by the extension was built and occupied prior to the effective date of the rule or was built and occupied at least fifteen years prior to the date of application for the extension

SUBCHAPTER 10 TARGETED REVITALIZATION INFRASTRUCTURE PROGRAM (TRIP)

14:3-10.7 Calculating the TRIP charge

N.J.A.C. 14:3-10.7 sets forth in greater detail the method the Board will use to calculate the TRIP charge for each regulated entity. Based on input received from stakeholders, the Board believes it will be helpful to augment the broad language of N.J.A.C. 14:3-10.7 with specific details on how the Board will meet the standards set forth in that provision. Therefore, the proposed new provisions set forth a formula for calculating the TRIP charge, definitions of terms used in the formula, and a provision requiring rounding to achieve the final TRIP charge.

Social Impact

The amendments proposed herein are expected to have a beneficial social impact because they will clarify and consolidate provisions addressing when an extension must be installed underground, allow for environmentally beneficial natural gas conversions, and clarify the calculation of the TRIP charge applicable under N.J.A.C. 14:3-10.

Economic Impact

The proposed amendments impose no new compliance requirements on regulated entities. Proposed new N.J.A.C. 14:3-8.4 will impose some technical and operational requirements on regulated entities but these are not new because the proposed section carries over the substance of existing requirements. The requirement to construct an extension underground instead of overhead can impose significant additional costs. However, for reliability and aesthetic reasons the Board has determined that it is appropriate to require underground extensions in the limited circumstances described in these rules.

The amendments proposed to N.J.A.C. 14:3-8.8 allow for natural gas conversions in areas not designated for growth, which may have a beneficial economic impact on gas companies and potential gas customers in areas not designated for growth.

The amendments proposed to N.J.A.C. 14:3-10.7 clarify the calculation of the TRIP charge. By providing a detailed formula, the rules will provide predictability and guidance in performing the complicated calculations necessary to determine the appropriate TRIP charge. Thus, the rules will reduce time and resources necessary for this calculation, and will reduce the likelihood that a regulated entity would have to hire a consultant.

Federal Standards Statement

Executive Order No. 27(1994) and N.J.S.A. 52:14B-22 through 24 require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The proposed amendments are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. In addition, while there are many Federal laws relating to the regulated entities and regulated services affected by the proposed amendments, none relates to the distribution of infrastructure extension costs between the regulated entity and the applicant for service. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for these proposed amendments.

Jobs Impact

The Board does not anticipate that the proposed amendments will have an impact on employment. The amendments proposed to N.J.A.C. 14:3-8.4 require the placement of certain extensions underground. While the construction of an underground extension is more labor intensive than overhead construction, an underground extension is less likely to require maintenance. Therefore, any increase in construction jobs will be somewhat compensated for by a decrease in maintenance jobs.

The amendments proposed to N.J.A.C. 14:3-8.8 allow for natural gas conversions in areas not designated for growth. This may result in a small increase in jobs in construction of natural gas extensions. However, this effect is not likely to be large because the number of natural gas conversions typically performed is not large.

The amendments proposed to N.J.A.C. 14:3-10.7 clarify the calculation of the TRIP charge. By providing a detailed formula, the rules will reduce time and resources necessary for this calculation, and will not likely have an impact on jobs, except that the rules might reduce the likelihood that a regulated entity would have to hire a consultant.

Agriculture Industry Impact

The Board believes that the proposed amendments will not have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules and amendments will not impose additional recordkeeping, reporting and other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 employees. Compliance requirements.

There are no small business providing telecommunication services regulated by the Board. There are fewer than ten small businesses each providing electricity, gas, and wastewater disposal services. Approximately 50 small businesses supply water. The amendments proposed to N.J.A.C. 14:3-8.4 carry over and clarify existing rules regarding underground extensions. For the small businesses affected by the proposed rules, the proposed amendments would impose some minor reporting, recordkeeping and other compliance requirements. These include the collection of information and the filing of reports with the Board. The rules would not, however, require the hiring of consultants or outside assistance, and would not require capital investments.

However, these requirements are necessary to ensure that the regulated entities supply safe, adequate and proper service, within the smart growth policies of the State. The Board has reviewed the rules proposed for readoption with amendments and it is the Board's belief that these rules are necessary to further important State smart growth goals. Therefore, the rules do not provide waivers or special provisions for small businesses.

The amendments proposed to N.J.A.C. 14:3-8.8 allow for natural gas conversions in areas not designated for growth. These will benefit any small businesses that supply natural gas. The amendments proposed to N.J.A.C. 14:3-10.7 clarify the calculation of the TRIP charge, which will reduce the time and effort required to file TRIP petitions and thus will assist small businesses in participating in TRIP.

Smart Growth Impact

The Board anticipates that the proposed amendments will have a slight positive impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan (State Plan), because they clarify and are part of a comprehensive set of rules specifically designed to further smart growth. The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing." The Board has proposed the amendments herein to help achieve the stated goal of fostering development and redevelopment in the areas of the State that have been designated for growth.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 8 EXTENSIONS TO PROVIDE REGULATED SERVICES

14:3-8.3 General requirement to provide extensions

(a) To obtain regulated services to serve new development or new customers, a person shall apply to the appropriate regulated entity, as defined at N.J.A.C. 14:3-1. for construction of an extension, as defined at N.J.A.C. 14:3-8.2. Prior to accepting the application, the regulated entity shall provide the applicant with a copy of this subchapter. At the time of submittal of an application for an extension, the regulated entity shall obtain from the applicant a signed certification that the applicant received a copy of this subchapter.

(b) - (e) (No change.)

14:3-8.4 [(Reserved)] Requirement to put certain extensions underground

(a) This section governs whether an extension, as defined at N.J.A.C. 14:3-8.2, shall be made underground or overhead.

(b) An extension for water or gas service shall be underground in all cases. An extension of cable television service shall be made in accordance with N.J.A.C. 14:18-2.

(c) An extension of electric or telecommunications service to non-residential development shall be made underground if both of the criteria below are met. Portions of the extension that do not meet these criteria may be made overhead:

1. The extension will serve non-residential development that does not have such

service as of {effective date of this rule}; and

2. The extension is located in an area in which the local government with jurisdiction requires that the extension be underground, or in an area in which the regulated entity providing the extension requires that the extension be underground.

(d) An extension of electric or telecommunications service to residential development shall be made underground if both of the criteria below are met. Portions of the extension that do not meet these criteria may be made overhead:

1. The extension is located within, and will serve, a development of three or more residential units that do not have such service as of {effective date of this rule}; and
2. Either of the following criteria are met:
 - i. The extension will be placed along streets that were constructed after {effective date of this rule}, or along streets constructed prior to that date which are not already served by overhead facilities; or
 - ii. The extension is of high-capacity main line electric distribution facilities with a capacity of 4 megavolt amps (MVA) or less.

(e) If a building that would require underground service under (c) or (d) above is located on a lot that abuts an existing street on which overhead facilities are already installed, the building may be served overhead, at the discretion of the regulated entity.

(f) Underground service shall be reasonably equivalent to comparable overhead service, and shall ensure that the customer will receive safe, adequate and proper service with a minimum difference in cost between overhead and underground service. If a customer desires underground service where it is not required under (c) or (d) above, the cost of the underground service shall be distributed in accordance with N.J.A.C. 14:3-8., but the customer shall be responsible for the difference in cost between installing overhead service and installing underground service.

(g) When an extension is installed underground, certain components may be installed above ground if necessary for safety or to provide reasonable access for maintenance. Examples are interconnecting points and pedestals, and electric transformers.

(h) If unusual circumstances would unreasonably delay a regulated entity's ability to provide underground service, the regulated entity may install temporary facilities in whatever manner is most practical under the circumstances. However, the regulated entity shall replace such temporary facilities as soon as practical with permanent underground service in accordance with this subchapter. The cost of the installation of the temporary facilities shall be distributed between the regulated entity and the applicant in the same way as the remainder of the extension costs under this subchapter.

(i) All street lighting in a development with underground electric service shall also be served underground.

(j) When the requirement that an extension be located underground will result in hardship, inequity, or will be discriminatory to other affected parties, the regulated entity or applicant may request from the Board a special exemption, or approval of special conditions. The Board may require that the requesting party submit, as part of such a request, documentation that the requesting party has deposited in an escrow account an amount up to the estimated difference in cost between underground and overhead service.

(k) Where affected regulated entities determine that it is practical, electric cables, communication cables, and cable television cables shall be installed in the same trench, if this can be done consistent with all applicable codes and regulations, and in particular those pertaining to safety.

(l) Where a trench is to be used for more than one regulated service, the regulated entity is not required to begin work on the underground system until the applicant has contacted all affected regulated entities and arranged for them to coordinate the installation of all services in the trench.

14:3-8.8 Exemptions from cost limits on areas not designated for growth

(a) The following shall be exempt from the requirements for costs of extensions to serve development in an area not designated for growth at N.J.A.C. 14:3-8.6 for the following:

1. [(Reserved.)] Natural gas conversions, as described in (c) below;
2. – 6. (No change.)

(b) (No change.)

(c) [Reserved.] An extension of natural gas service shall be exempt from the requirements for costs of extensions to serve development in an area not designated for growth at N.J.A.C. 14:3-8.6, provided that the sole purpose of the extension is to allow for replacement of existing appliances powered by energy sources other than natural gas with natural gas appliances, in one or more structures that were built and occupied prior to {effective date of this rule}, or were built and occupied at least fifteen years prior to the date of the application for the extension.

(d) - (j) (No change.)

SUBCHAPTER 10 Targeted revitalization infrastructure program (TRIP)

14:3-10.7 Calculating the TRIP charge

(a) (No change.)

(b) The Board shall set the amount of a TRIP charge at a level that will provide the regulated entity with the following:

1. A return on eligible TRIP investments, offset by accumulated depreciation and accumulated deferred income taxes, and adjusted for taxes. The return shall be set at the [regulated entity's current cost of debt, adjusted for taxes. The current cost of debt shall be determined by the Board and calculated using the] rate for seven year constant maturity treasuries, as shown in the Federal Reserve Statistical Release published on or closest to August 31, plus sixty (60) basis points; and
2. Recovery of depreciation expense on the eligible investments, calculated using the regulated entity's overall composite depreciation rate in effect for that class of assets.

(c) (No change.)

*(e) The TRIP charge shall be calculated annually using the following formula:

$$\frac{(ERI - ADEP - ADIT) * ATCR * RAF + ERI * DEP + PP}{PT}$$

For the purposes of the above formula, the following terms are defined as follows:

1. "TRIP charge" means the charge that the Board authorizes the regulated entity to assess from each applicable customer to pay for approved ERI, as defined at 4 below, made under the TRIP;
2. "ERI" means the total accumulated eligible revitalization investments that:
 - i. Are eligible for TRIP coverage under N.J.A.C. 14:3-10.3;
 - ii. Have accumulated from the beginning of the first investment year (see 3 below for a definition of investment year); and
 - iii. Have been placed in service prior to the end of the most recent investment year;
3. "Investment year" means a period during which the regulated entity makes investments in infrastructure under the TRIP. The first investment year shall begin on the effective date of the initial Board order approving the TRIP, or on another date set forth in the Board order. The first investment year shall end one year later, or on a date specified by the Board. Each subsequent investment year shall run for one year, starting on the day after the end of the previous investment year;
4. "ADEP" means the total accumulated depreciation that the regulated entity has recovered through TRIP on the ERI. For example:
 - i. For the first annual TRIP adjustment, the ADEP would be zero;
 - ii. For the second annual TRIP adjustment, the ADEP would be (ERI made during the first investment year) x DEP (see 9 below for definition of DEP); and
 - iii. For the third annual TRIP adjustment, the ADEP would be ((ERI made during the first Investment Year) x DEP) + (ERI made during the first and second Investment Years) x DEP;
5. "ADIT" means the total accumulated deferred income taxes, which are attributable to the difference between the regulated entity's book depreciation

- expense and the tax depreciation expense associated with ERI under the TRIP;
6. "ATCR" means the after tax cost rate, which shall be calculated by multiplying the return on ERI under the TRIP by (1 minus the income tax rate that applies to the regulated entity). The return shall be the rate for seven year constant maturity treasuries, as shown in the Federal Reserve Statistical Release published on or closest to the August 31 immediately prior to the annual TRIP adjustment approval, plus sixty (60) basis points. For example:
 - i. If the return on ERI (i.e., the rate for seven year constant maturity treasuries) is 5%, and the Federal Income Tax Rate is 35%, and the Corporate Business Tax is 9%, the ATCR will be 3.31%. This is calculated using the combined income tax rate of 40.85% $[(0.09*1) + (0.35*(1-0.09))]$, using the above formula as follows $(5%+.6%) \times (1 - 40.85\%)$;
 7. "RAF" means the revenue adjustment factor that was set by the Board in the regulated entity's last rate case, updated for changes in taxes and assessments;
 8. "DEP" means the depreciation rate applicable to ERI, as defined above. The DEP shall be the composite depreciation rate for each class of ERI, as determined by the Board in the regulated entity's most recent rate case;
 9. "PP" means the amount over or under-recovered by the regulated entity through the TRIP charge during the prior recovery year;
 10. "Recovery year" means an annual period beginning on a date set by the Board during the first TRIP charge adjustment proceeding. Each subsequent recovery year shall run for one year, starting on the day after the end of the previous recovery year;
 11. "PT" means the firm throughput to applicable customers, which is projected to occur during the next recovery year, in therms, kwh, or gallons; and
 12. "Applicable customers" means those gas and electric customers from whom a regulated entity is authorized to assess the Societal Benefits Charge (SBC), and all water customers.

(f) The amount derived from the formula described above shall be rounded to the nearest 1/100th of a cent per unit of throughput in therms, kwh, or gallons.